Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337

REPLY COMMENTS OF THE NEBRASKA RURAL INDEPENDENT COMPANIES AND THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

The Nebraska Rural Independent Telephone Companies and The South Dakota Telecommunications Association, on behalf of its member companies, (jointly referred to as "the Companies"), appreciate the opportunity to reply to comments regarding the Federal-State Joint Board on Universal Service ("Joint Board") recommendation to place an interim cap on high-cost universal service fund ("USF") support distributed to competitive eligible telecommunications carriers ("CETCs"). The Companies submit that the record developed in the comments supports the adoption of the interim cap proposal in its entirety and without delay.

Many of the wireless CETCs' comments suggest that an interim, emergency cap on CETC support will jeopardize the provision of additional wireless service in rural areas, and that the cap will last longer than recommended by the Joint Board. However, the Joint Board has made commitments to continue universal service reform efforts in a timely manner, including adoption of a further recommended decision addressing fundamental high cost reforms within six months of the Recommended Decision. Furthermore, as documented by the Companies in their Initial Comments in this proceeding and by recently released empirical studies, high-cost support received by wireless CETCs is not necessarily used to extend service to unserved rural areas. An interim cap on high-cost USF support to CETCs would benefit consumers by slowing growth in the fund and stabilizing the consumer surcharge.

Several of the wireless CETCs take issue with the reasons presented by the Joint Board why an interim cap on high-cost support only for competitive ETCs would not violate the Commission's universal service principle of competitive neutrality.

Specifically, the Joint Board identified different regulatory treatment between ILECs and competitive ETCs to include: competitive ETCs may not have the same COLR obligations as incumbent local exchange carriers ("ILECs"); competitive ETCs are not subject to rate regulation; competitive ETCs, unlike ILECs, have no equal access obligations; and incumbent rural LECs' universal service support is cost-based, while competitive ETCs' support is not. As demonstrated in these Comments, the wireless CETCs' claims are unfounded. In addition, in some instances the claims were supported by misleading data or statements.

Some commenting parties suggest that the interim cap should be extended to all ETCs. However, this would not measurably reduce growth in the fund, as several of the support mechanisms are already capped, and ILEC ETC support has been declining in recent years in large part due to these caps. In addition, capping ILEC support would further exacerbate the inequities in the current system that arise from the identical support rule and the porting of "access" related support to wireless carriers that, unlike ILECs, do not provision access services.

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I. Introduction

The Nebraska Rural Independent Telephone Companies and the South Dakota Telecommunications Association, on behalf of its member companies, (jointly referred to as "the Companies")[1] respectfully submit these reply comments in the above captioned proceeding. The Companies appreciate the opportunity to reply to comments in this matter filed in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") released on May 1, 2007.[2] In the NPRM, the Commission seeks comment on the *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board') to impose an interim, emergency cap on the amount of high-cost support that competitive eligible telecommunications carriers

[1] A complete listing of the companies comprising the Nebraska Rural Independent Telephone Companies and the South Dakota Telecommunications Association member companies are listed in Appendix A.

[2] *See High-Cost Universal Service Support,* WC Docket No. 05-337, *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (rel. May 1, 2007) (*"Recommended Decision"*).

("CETCs") may receive for each state based on the average level of competitive ETC support distributed in that state in 2006.[3]

The Companies continue to recommend that an interim, emergency cap on the amount of high-cost universal service fund ("USF") support, is a prudent and necessary step to preserve the sustainability of the fund in the short term, while analyzing long-term reforms. As the Companies will demonstrate in these Comments, a large number of commenting parties recognize that an interim cap on high-cost USF support for CETCs is a necessary and responsible step that will help consumers. The arguments made against the cap by wireless CETCs are unfounded and without merit. While wireless CETCs have argued that an interim cap would hamper buildout of their networks into unserved rural areas, recently released empirical evidence suggests no connection between the receipt of USF support and buildout into unserved rural areas. The recommendation made by some parties that the interim cap should be extended to all ETCs would do little to constrain growth and sustain the fund, while an interim cap would help to reduce the significant windfalls that wireless CETCs receive from the identical support rule and the receipt of access-related support. Therefore, the Companies support the measures to stabilize the high-cost USF contained in the *Recommended Decision* in their entirety, and urge the Commission to adopt such measures expeditiously.

II. A Large Number of Commenting Parties, Including the Nation's Two Largest Wireless Carriers and State Consumer Advocates, Recognize that an Interim Cap on CETC Support is a Necessary and Responsible Step that Helps Consumers.

Some of the comments from certain – but not all – wireless interests in this proceeding contend that the Joint Board's proposed interim, emergency cap on high-cost

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[3] Id. at ¶ 1.

support for CETCs will cause a demise of companies' ability to provide wireless service in rural America.[4] In response to the claims by wireless carriers that an interim cap on high-cost support for CETCs will negatively affect wireless service in rural America and consumers that live in such areas, the Companies offer these observations. The cap on high-cost ETC support is recommended as an *interim*, not permanent measure. Furthermore, empirical evidence indicates that benefits of high-cost USF support claimed by wireless CETCs, such as increased coverage and increased choice of providers, cannot be substantiated. Wireless CETCs have not demonstrated a direct correlation between receipt of high-cost USF support and buildout of their networks to unserved rural areas. Rather, they have only offered anecdotes regarding the number of towers built in rural areas due to USF support, which cannot be verified. Finally, whereas the benefits of ever increasing high-cost support paid to wireless CETCs cannot be substantiated, the benefits to consumers of a stable universal service contribution factor are readily quantifiable.

The Joint Board, in recommending a cap on CETC support, noted that it should be an *interim measure* that is used to stem the growing crisis in high-cost support growth while the Commission and the Joint Board consider further reform.[5] The Joint Board stated "[w]e remain committed to comprehensive reform of the high-cost universal service support mechanism."[6] The Joint Board further stated ". . . we commit to adoption of a further recommended decision addressing fundamental high cost reforms within six

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[4] *See*, for example, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of CTIA-The Wireless Association (filed June 6, 2007) (*"CTIA Comments"*).

[5] *See Recommended Decision* at ¶ 8.

[6] Ibid.

months of today's Recommended Decision."[7] While some wireless CETCs assert that an interim cap only on CETCs will remain in place longer than intended and point to past universal service reform efforts,[8] the Companies submit that the Joint Board should be taken at its word in its commitment to develop comprehensive universal service reforms in a timely fashion. Further, if the interim cap on CETC support is adopted, the Commission certainly has it within its ability to order a sunset of the cap within a defined time frame as a means of placing a firm deadline on the development and implementation of longer term USF reforms.

Wireless CETCs assert that they are currently using USF support to build out networks in rural and high-cost areas.[9] However, as the Companies' documented in their Comments, despite receiving $72.5 million in federal high-cost USF support for South Dakota from 2003-2006, Alltel largely did not apply that support to extend service to unserved areas.[10] Furthermore, recent empirical studies of the use of USF support by wireless CETCs across the nation indicate that the Alltel example is not an isolated case. Criterion Economics, LLC ("Criterion") recently released a study which indicates that "[c]ontrary to the claims of wireless carriers, and holding constant such other factors as topography and population density that affect the availability of wireless service, *there is*

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[7] Ibid.

[8] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Dobson Cellular Systems, Inc. on Cap Proposal (filed June 6, 2007) (*"Dobson Comments"*) at pp. 7-8 and *CTIA Comments* at p. 23.

[9] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of United States Cellular Corporation and Rural Cellular Corporation (filed June 6, 2007) (*"U.S. Cellular Comments"*) at p. 17 and Comments of Sprint Nextel Corporation (filed June 6, 2007) (*"Sprint Nextel Comments"*) at p. 10.

[10] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of Nebraska Rural Independent Companies and the South Dakota Telecommunications Association (filed June 6, 2007) (*"Companies Comments"*) at pp. 5-6.

no statistical correlation between the amount of subsidies paid and the proportion of the population or land area that has wireless coverage."[11] The study also indicated that there is no statistical evidence that requiring five-year plans and annual reports by the states or FCC is an effective means to strengthen wireless CETCs' incentives to invest their USF support in a manner to increase wireless coverage.[12] Furthermore, another study by Criterion indicates that ". . . again holding other factors constant, *there is no statistical correlation between the amount of subsidies paid and the number of carriers from which consumers can choose, i. e., USF subsidies do not contribute to the level of wireless competition.*"[13] In explaining the results of the studies, the authors point out that wireless carriers do not receive subsidies on the basis of the amount of coverage they provide, but rather on the basis of how many subscribers they serve in areas where they are eligible for subsidies. There are many ways they can expand the number of subsidized lines without expanding their coverage, such as increasing their marketing efforts or opening more retail outlets.

The Criterion studies also examined the distribution of USF support paid to wireless CETCs. The studies found that collectively, the ten largest CETCs that received USF support, which were all wireless carriers, received 80 percent of all USF support paid to CETCs.[14] The single largest CETC recipient of USF support is Alltel, which

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[11] *See* Press Release, "New Studies Question Benefits of USF Subsidies to Wireless Carriers" (Criterion Economics, LLC, June 13, 2007) at p. 1 (*"Criterion Press Release"*) (emphasis in original).

[12] *See* Kevin W. Caves and Jeffrey A. Eisenbach, "The Effects of Providing Universal Service Subsidies to Wireless Carriers" (Criterion Economics, LLC, June 13, 2007) at pp. 38-39.

[13] *See Criterion Press Release* at p. 2 (emphasis in original).

[14] Ibid.

received over $226 million in 2006, or 29 percent of all subsidies paid to CETCs. USF support accounted for 27 percent of Alltel's operating earnings in 2006.[15]

The information presented above indicates that the argument that consumers will be harmed by an interim cap on CETC support due to a decrease in wireless CETC construction to expand service to unserved areas is not supported by the facts. However, there are a large number of parties that support the Joint Board's recommendation for an interim cap on CETC support as a step that will help the nation's consumers by slowing the explosive growth in the USF, and thus slowing increases in the contribution factor. Weighing the purported benefits of continued growth in CETC support against the impact of USF increases on customers, among those parties supporting the cap are the nation's two largest wireless providers (incidentally, both are CTIA members) and the national association representing state consumer advocates.

Verizon and Verizon Wireless ("Verizon"), filing jointly, call the Joint Board recommendation "an appropriate and reasonable response" to the "urgent problem" of keeping the USF sustainable in lieu of CETC growth.[16] AT&T Inc. ("AT&T") also supports the cap, saying "[t]he Board's interim solution provides a temporary and tailored reform measure that should bring needed discipline to the fund."[17] AT&T indicates that

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[15] Ibid.

[16] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of Verizon and Verizon Wireless (filed June 6, 2007) (*"Verizon Comments"*) at p. 1.

[17] U.S., Congress, Senate, Committee on Commerce, Science, &Transportation, *Universal Service Fund: Assessing the Recommendations of the Federal-State Joint Board*, 110th Cong., 1st sess., 2007, Statement of Joel E. Lubin, Vice President, Regulatory Planning & Policy, AT&T Services, Inc., available at: http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=1873.

"[w]e support this measure even though there will be some adverse impacts" [18] including a short-term reduction in universal service funding to AT&T and other carriers.

Meanwhile, it is important to recognize the notable parties that understand the consumer benefits that a cap on CETC support cap will produce.[19] Verizon says the interim cap "results in immediate relief to consumers by easing financial demands on the high cost fund in the near term; and protects consumers by keeping the cap in place until the Commission adopts comprehensive universal service reform."[20] Meanwhile, the National Association of State Utility Commission Consumer Advocates ("NASUCA"), which represents utility consumer advocates in forty states and the District of Columbia, urges that "consumers cannot be asked to bear this burden" of explosive USF growth described in the Joint Board's *Recommended Decision.*[21]

In addition, NASUCA brings forth solid reasoning in response to wireless carriers that claim capping the fund for CETCs will discourage wireless deployment in rural areas, noting that "many carriers were and have been deploying wireless facilities **without** such support" in rural areas.[22] At a minimum, NASUCA adds, the impact of this cap on wireless funding is "speculative," while the impact on consumers of the increased

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[18] Ibid.

[19] Commenting supporters of a cap on CETC support in some form are a number of state public utility commissions, including the New Jersey Board of Public Utilities, the State of New York Department of Public Service, the Public Utilities Commission of Ohio, the California Public Utilities Commission and the People of the State of California and the Iowa Utilities Board.

[20] *See Verizon Comments* at p. 5.

[21] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the National Association of State Utility Consumer Advocates Supporting a Cap on the High-Cost Universal Service Fund (filed June 6, 2007) (*"NASUCA Comments"*) at pp. 4-5.

[22] Id. at p. 6.

funding that will occur without a cap is "definite."[23] The speculative impact of this cap is further reinforced by the Joint Board's recommendation that the Commission "abandon or modify" the identical support rule,[24] which if implemented would significantly reduce wireless support. Finally, NASUCA recognizes, as did the Companies in our Comments and the Joint Board in its *Recommended Decision,* that CETCs and incumbent LECs ("ILECs") are held to entirely different regulatory standards, including carrier of last resort obligations for ILECs.[25] Indeed, on behalf of the nation's consumers, NASUCA has convincingly weighed the decision facing the Commission and reached a rational conclusion that consumers are best served by the cap on CETC support.

III. Wireless CETCs Present Unfounded Claims and Data to Support Their Assertion That High-Cost Universal Service Support Should not be Capped on an Interim Basis for CETCs.

Predictably, some wireless CETCs assert that an interim cap should not be placed on high-cost universal service support for CETCs. The Companies submit that many of the arguments presented by wireless CETCs as to why an interim cap should not be implemented are without basis. Furthermore, much of the data presented to support the wireless CETCs' assertions is misleading.

Many of the wireless CETCs attack the reasons given by the Joint Board as to why an interim cap on high-cost support only for competitive ETCs would not violate the Commission's universal service principle of competitive neutrality. Specifically, the Joint Board identified different regulatory treatment between ILECs and competitive

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[23] Ibid.

[24] Ibid.

[25] *See NASUCA Comments* at pp. 6-7.

ETCs to include: competitive ETCs may not have the same COLR obligations as incumbent local exchange carriers ("ILECs"); competitive ETCs are not subject to rate regulation; competitive ETCs, unlike ILECs, have no equal access obligations; and incumbent rural LECs' universal service support is cost-based, while competitive ETCs' support is not.[26]

In general, CTIA notes that to the extent ILECs and CETCs are subject to different regulations, CTIA ". . . supports the removal of incumbent LEC regulatory obligations that are no longer appropriate given marketplace evolution. . . ."[27] Dobson Cellular Systems, Inc. ("Dobson") also makes this same argument.[28] However, in the unlikely event that the FCC were to remove all regulatory obligations to which ILECs are currently subject and wireless CETCs are not, regulatory obligations would still exist for ILECs at the state level. Furthermore, many of the differences in regulation stem from statutory commands, and cannot be changed without a change in statute.[29] Therefore, the Companies assert that the rationale for an interim cap on CETC support based upon differing regulation is valid, as the differences in regulation will persist well into the future.

Several wireless CETCs attempt to suggest that there is no difference in COLR obligations. For example, Sprint Nextel asserts without substantiation that CETCs are

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[26] *See Recommended Decision* at ¶ 6.

[27] *See CTIA Comments* at p. 12.

[28] *See Dobson Comments* at p. 6.

[29] For example, the requirement to offer equal access at the federal level, *see* 47 U.S.C. § 251(c)(3), and Nebraska and South Dakota statute restricting market entry for ILECs, *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *High-Cost Universal Service Support*, WC Docket No. 05-337, Comments of Nebraska Rural Independent Companies and the South Dakota Telecommunications Association (filed May 31, 2007) (*"Companies Long Term Reform Comments"*) at p. 3.

"subject to service obligations which *closely mirror* carrier of last resort obligations."[30] Alltel states, also without explanation, that the Commission has already subjected CETCs to the same COLR obligations as ILECs.[31] CTIA asserts that CETCs are subject to the "reasonable request" standard for offering service.[32] All of these statements describe the reasonable request standard for providing service. As the Companies indicated in their comments regarding solutions for long-term universal service reform, the reasonable request standard simply is not the same as COLR obligations that are imposed on many ILECs, such as the statutory obligations in Nebraska and South Dakota.[33] The reasonable request standard allows CETCs to refuse to serve a customer if the CETC determines that the cost to serve a customer is too great. ILECs do not have such latitude. Therefore, there is a clear difference in COLR obligations between ILECs and CETCs, and this difference is one of many which support the need for an interim cap on high-cost USF paid to CETCs.

Some wireless CETCs suggest that many ILECs are not subject to rate regulation,[34] or that ILECs have benefited from such regulation.[35] However, most rural ILECs are subject to rate-of-return ("ROR") regulation on interstate access, and many

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[30] *See Sprint Nextel Comments* at p. 8 (emphasis added).

[31] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Alltel Comments (filed June 6, 2007) (*"Alltel Comments"*) at p. 12.

[32] *See CTIA Comments* at p. 15.

[33] *See Companies Long Term Reform Comments* at pp. 4-7.

[34] *See CTIA Comments* at p. 13.

[35] *See Sprint Nextel Comments* at p. 8.

ILECs are also ROR regulated for intrastate access services.[36] Furthermore, while ROR may offer some assurance of cost recovery, it also entails increased service obligations and costs to meet those obligations.[37] Therefore, ROR regulation is another difference that supports the need for an interim cap on high-cost USF paid to CETCs.

Wireless CETCs assert that the fact that they do not have equal access obligations, as do ILECs, should have no bearing on a decision to place an interim cap on high-cost USF support for CETCs. CTIA asserts that equal access obligations stem from ILECs' "historical monopoly status."[38] Sprint Nextel argues that high-cost funds are not used to support equal access activities, and therefore equal access obligations should have no bearing on an analysis of the high-cost universal service program.[39] These assertions fail to recognize the primary reason why the fact that ILECs have equal access obligations and wireless CETCs do not is important; that is, the Commission has created universal service support funds to replace revenue from mandated access rate reductions. As the Companies indicated in their Comments, wireless CETCs do not provide access services because they are not subject to equal access obligations. Therefore, wireless CETCs should not be entitled to receive support tied to equal access obligations.[40] The fact that wireless CETCs are currently receiving support for a service that they do not provide is yet another reason to support an interim cap on high-cost USF support paid to CETCs.

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[36] *See Companies Comments* at p. 5.

[37] Ibid.

[38] *See CTIA Comments* at p. 14.

[39] *See Sprint Nextel Comments* at p. 8.

[40] *See Companies Long Term Reform Comments* at pp. 8-9.

Some wireless CETCs argue that a large portion of ILEC high-cost USF support is not cost-based, and therefore is not a reason to justify differentiation of treatment of ILECs and CETCs in the high-cost universal service support mechanism. Both CTIA and Sprint Nextel assert that some rural ILECs are average schedule companies, which do not conduct their own cost studies.[41] However, average schedule companies are compensated on the basis of proxy costs, which are computed by developing relationships between variables and costs using data from other representative wireline companies that do conduct cost studies. These same commenting parties make a further unsubstantiated claim that ILECs filing cost studies have an incentive to overstate their costs, as such an action would result in an increase in universal service support to the ILEC.[42] However, because the rural high-cost loop support mechanism is capped, any overstating of costs by an ILEC would not, as these parties argue, necessarily result in increased support. In fact, because rural ILEC support is based on a scale relative to national average loop costs, an individual ILEC does not have sufficient information to determine whether the growth in its costs is greater or lesser than the national average. Furthermore, the cap on the entire fund limits the growth in total support paid, often to an amount far less than the growth in total costs in any given year. Therefore, a rural ILEC does not have incentives to overstate its costs in order to receive additional high-cost loop support, as it is impossible to determine whether increased costs will result in increased support. Rural ILECs' universal service support is cost-based, while it is clearly not for wireless CETCs.

[41] *See CTIA Comments* at p. 16 and *Sprint Nextel Comments* at p. 9.

[42] *See CTIA Comments* at p. 6 and *Sprint Nextel Comments* at p. 9.

Wireless CETCs also present misleading data on the deployment of wireless broadband service in order to suggest that an interim cap on high-cost USF support for CETCs would inhibit the deployment of broadband services to rural areas. CTIA states that wireless carriers have been adding broadband customers at a rate exponentially faster than other technology platforms.[43] Both CTIA and Dobson state that there are now fully half as many mobile wireless broadband customers as DSL customers.[44] In order to assess the veracity of these claims, one must understand the manner in which wireless carriers report high-speed lines. Unlike the reporting of DSL or cable modem lines, which is done on the basis of subscriptions to DSL or cable modem service, wireless high-speed lines are reported as the number of end-users whose mobile devices are capable of sending and receiving data at speeds in excess of 200 kpbs.[45] The FCC notes that ". . . the current instructions make it likely that more and more mobile voice service subscribers will be reported as mobile broadband subscribers merely by virtue of purchasing a broadband-capable handset, rather than a specific Internet plan."[46] In other words, the current reporting of wireless high-speed lines would be analogous to reporting that every desktop computer is a high-speed line, as high-speed network interface cards are typically installed in standard desktop computers, regardless of whether or not the owner of the computer anticipates the purchase of high-speed service to access the

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[43] *See CTIA Comments* at p. 7.

[44] *See CTIA Comments* at p. 7 and *Dobson Comments* at p. 5.

[45] *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Notice of Proposed Rulemaking, FCC 07-17 (rel. Apr. 16, 2007) at ¶ 12.

[46] Ibid.

Internet. Therefore, the claims that wireless carriers are instrumental to deploying broadband services to rural areas are greatly exaggerated given the current state of reported data. The number of subscribers using wireless broadband services to access the Internet are likely much fewer than the number of high-speed capable wireless devices, just as the number of subscribers using DSL or cable modem to access the Internet are fewer than the number of desktop computers with high-speed network interface cards. Until the FCC revises its methodology for reporting wireless high-speed lines, the data is not useful for making policy decisions such as those affecting universal service distributions.

Several wireless CETCs assert that imposing an interim cap on high-cost USF support paid to CETCs would not be competitively neutral. Two of these carriers even incorrectly use the same court decision in defense of their position. Sprint Nextel states that the United States Court of Appeals for the Fifth Circuit "*affirmed* the relevance of the competitive and technological neutrality principle, stating that the universal service program 'must treat all market participants equally. . . . [T]his principle is made necessary not only by the economic realities of competitive market but also by statute.'"[47] CTIA cited the same statement in the Fifth Circuit's decision and stated that: ". . . *the courts have admonished the Commission* not to erect carrier- or platform-specific barriers to the receipt of support."[48] While Sprint Nextel and CTIA use the words "affirmed" and "admonished," which suggest that the court statement they cite was a finding of the court,

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[47] *See Sprint Nextel Comments* at p. 7 (emphasis added), citing *Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 622 (5th Cir. 2000).

[48] *See CTIA Comments* at p. 20 (emphasis added), citing *Alenco Communications, Inc. v. FCC,* 201 F.3d 608, 616 (5th Cir. 2000).

the court statement which they cite is actually from a section of the decision describing the principles used by the Commission in developing the universal service support mechanism. One of the introductory sentences in this section of the court decision states "[w]e describe the general principles guiding the Commission's judgment. . . ." CTIA and Sprint misconstrue a general statement of the Commission's universal service principles as a finding by the court. The statement they cite does not bear on whether or not an interim cap on high-cost USF support to CETCs would be competitively neutral. Indeed, as the Joint Board has indicated, due to the differences in regulatory treatment between ILECs and CETCs described above, differences in the universal service support mechanism may be necessary for ILECs and CETCs.[49]

In fact, the Companies submit that the current high-cost universal service support mechanism is not competitively neutral for ILECs, and that wireless CETCs, in objecting to an interim cap on high-cost USF support paid to CETCs, are attempting to preserve advantages they experience under the current mechanism. As the Companies indicated in their comments, wireless CETCs often receive support for three and even four subscriptions per household, providing wireless CETCs with far more support per household, even though the wireline carrier serving the same household also serves the same number of persons as the wireless CETC.[50] ILECs are subject to COLR obligations which increase their costs relative to wireless CETCs that do not serve all household and business locations in a service area, especially the most-remote and costly locations to

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[49] *See Recommended Decision* at ¶ 6.

[50] *See Companies Comments* at pp. 2-3.

serve.[51] Under the identical support rule, wireless CETCs receive support from mechanisms designed to compensate ILECs for reductions in access rates, even though wireless CETCs do not provide access services.[52] The Companies assert that, despite arguments by wireless CETCs to the contrary, the interim cap on CETC support will allow the Joint Board and the Commission to develop a sustainable universal service support mechanism that is competitively neutral.

IV. An Additional Cap on Non-CETC USF is Unwarranted as No Reductions in USF Would Result and Existing Wireless CETC Support Already Contains Significant Windfalls Due to the Identical Support Rule and the Inclusion of Access Costs.

While support for the Joint Board cap on CETC support is widespread, select parties recommend that the interim cap be extended to all ETCs.[53] The Companies stress that such a step is not only unwarranted, as incumbent ETC support has in fact been on the decline in recent years[54] in large part due to existing caps on such support, but wireless carriers already are over-compensated under the current system due to the identical support rule and the inclusion of ILEC access costs that wireless companies do not incur.[55]

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[51] *See Companies Long Term Reform Comments* at pp. 4-7.

[52] *See Companies Comments* at pp. 3-4.

[53] *See High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the New Jersey Board of Public Utilities (filed June 6, 2007) at p. 4; State of New York Department of Public Service Comments (filed June 6, 2007) at p. 2; Comments of Tracfone Wireless, Inc. on Joint Board Proposal for Interim High Cost Funding Cap (filed June 6, 2007) at pp. 1-2; and *CTIA Comments* at pp. 27-28.

[54] *See* Statement of Chairman Kevin J. Martin, *Federal-State Joint Board on Universal Service En Banc Meeting,* Washington DC, (Feb. 20, 2007) at p. 4.

[55] *See Companies Comments* at pp. 2-4.

As Verizon and Verizon Wireless recognize, the Joint Board's *Recommended Decision* correctly observes that the Commission has long imposed caps on high cost support to ILECs.[56] The *Verizon Comments* properly cite existing caps on ILEC High-Cost Loop ("HCL") support, Interstate Access Support ("IAS"), and the safety valve support mechanism as well as safety valve support for an individual rural carrier.[57] While the Companies do not support the HCL cap, as it has created significant under-recovery of actual loop costs by rate-of-return companies,[58] this cap and others have unquestionably created the flattening of and even decline in ILEC support referenced by Chairman Martin and others. That being the case, there is no reason to consider any action on further USF caps beyond the interim CETC cap.

In addition, further capping of ILEC support would further exacerbate the inequities in the system due to the identical support rule and the inclusion of ILEC access costs in wireless CETC support, even though wireless companies do not provide access services. As Verizon and Verizon Wireless detail, the current system lacks competitive neutrality as each ILEC line and wireless handset are counted the same, leading to the rapid growth in ILEC support – with a family with one wireline connection and five wireless handsets increasing support for this family by a factor of six.[59] Further, as

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[56] *See Verizon Comments* at pp. 2-3.

[57] Ibid. at pp. 6-8.

[58] *See* Appendix H, National Exchange Carrier Association's 2006 Annual USF Data Submission to the FCC and USAC, which reported that more than $750 million in loop costs will not be recovered because of the HCL fund cap alone.

[59] *See Verizon Comments* at p. 11.

AT&T[60], the Companies[61] and other parties have stressed, the $1 billion in support that wireless CETCs already received in 2006 includes access costs that these carriers have not incurred, nor that they are required to demonstrate. A capping of any additional ILEC support, in light of this wireless windfall, would be nonsensical.

V. Conclusion

The Companies appreciate the opportunity to reply to comments filed by interested parties regarding the Joint Board's *Recommended Decision* to impose an interim, emergency cap on the amount of high-cost support that CETCs may receive. The Companies submit that the record created by the comments supports the adoption of the *Recommended Decision* by the Commission expeditiously and in its entirety.

Date: June 21, 2007

THE NEBRASKA RURAL INDEPENDENT COMPANIES and THE SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

By: ______________________

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THEIR ATTORNEYS

[60] *See* Letter from Ms. Mary L. Henze, Senior Director, Federal Regulatory, AT&T, to Ms. Marlene Dortch, Secretary, FCC, WC Docket No. 05-337, CC Docket No. 96-45 (filed March 22, 2007) Attachment, in which AT&T proposes that USF for wireless CETCs should be reduced by 25 percent in recognition of the USF windfall that they have received under the identical support rule in receiving USF that includes access costs based on access reforms targeted at ILECs.

[61] *See Companies Comments* at p. 4.

Exhibit A
List of Companies

The Nebraska Rural Independent Companies:

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco Inc.,
Consolidated Telecom, Inc.,
Consolidated Telephone Company,
Curtis Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Company, Inc.,
K&M Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco

The South Dakota Telecommunications Association:

Member companies are:

Alliance Communications Cooperative,
Armour Independent Telephone Company,
Beresford Municipal Telephone Company,
Bridgewater-Canistota Independent Telephone,
Cheyenne River Sioux Tribal Telephone Authority,
Faith Municipal Telephone Company,
Fort Randall Telephone Company,
Golden West Telecommunications Cooperative,
Hills Telephone Company,
Interstate Telecommunications Cooperative,
James Valley Telecommunications,
Jefferson Telephone Company d.b.a. Long Lines,
Kadoka Telephone Company,
Kennebec Telephone Company,
McCook Cooperative Telephone Company,
Midstate Communications, Inc.,
Mount Rushmore Telephone Company,
PrairieWave Community Telephone,
RC Communications, Inc.,

Roberts County Telephone Cooperative,
Santel Communications Cooperative, Inc.,
Sioux Valley Telephone Company,
Splitrock Properties, Inc.,
Stockholm-Strandburg Telephone Company,
Swiftel Communications,
Tri-County Telcom, Inc.,
Union Telephone Company,
Valley Telecommunications Cooperative,
Venture Communications Cooperative,
Vivian Telephone Company,
West River Cooperative Telephone Company,
West River Telecommunications Cooperative, and
Western Telephone Company.